REMARKS

After the foregoing amendments, claims 5 and 11 are currently pending in this application, claims 1 – 4 having been canceled without prejudice. Claim 11 has been amended to more particularly point out and distinctly claim the invention. Support for this amendment can be found in paragraphs [0042] – [0044] and Fig. 9A of the originally-filed application. In the specification, paragraph [0044] has been amended to correct typographical errors -- (1) there is no Fig. 8A; Fig. 9A illustrates the distribution of reagents in servers 26, 27, and 28, and (2) deletion of an erroneous "of." No new matter has been introduced into the application by these amendments.

Claims 6 – 10 were previously withdrawn from consideration pursuant to a Restriction Requirement. Applicant expressly reserves the right to file future applications directed to claims 6 – 10 without prejudice.

35 USC § 112

Claims 5 and 11 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Clarifying amendments to claim 11 obviate this rejection. More specifically, and for the sake of clarity, below is an excerpt of claim 11 (as amended) that includes bolded server legends and assay types as represented in Fig. 9A.

> . . . the *third* source **26** of reagents contains reagents needed for conducting the first **A**, second **B**, and third **C** sub-groups of assays, the second source **27** of reagents contains only those reagents needed for conducting the first **A** and second **B** sub-groups of assays, and the *first* source **28** of reagents contains only those reagents needed for conducting the first sub-group **A** of assays.

See paragraph [0044] where it is explained that reagents for type A assays are duplicated in server 26 and 27 (as well as originally being in server 28 – paragraph [0043]). As shown in Fig. 9A, reagents for A assays are in servers 28, 27, and 26 . . . reagents for B assays are in servers 27 and 26 . . . and reagents for C assays are in server 26. Thus, withdrawal of the 35 U.S.C. § 112 rejections of claims 5 and 11 is respectfully requested.

Response to Arguments

For the record, it appears the Office Action contains a typographical error in stating that "Applicant has provided new claim 13 . . . ." In the Response filed September 1, 2009, Applicant added new claim 11. The instant application does not include a claim 13 at this time.

35 USC § 103

Claims 5 and 11 stand rejected under 35 USC § 103 as unpatentable over U.S. Patent No. 7,101,715 to Devlin in view of U.S. Patent No. 7,270,784 to Vuong et al. Applicants respectfully traverse the rejection of these claims and respectfully submit that these claims are patentable over the art of record for at least the reasons set forth below.

Independent claim 11, as amended, recites features that are neither disclosed nor suggested by Devlin or Vuong. For the sake of clarity, Applicant has included bolded server legends and assay types consistent with the descriptions in the originally-filed specification.

> A method for increasing the throughput of an analyzer . . . the method comprising the steps of . . . providing first **28**, second **27**, and third **26** sources of reagents . . . partitioning the different assays to be conducted by the analyzer into . . . a first sub-group **A** of assays comprising those assays having the highest frequency of being conducted by the analyzer; . . . a third sub-group **C** of assays comprising those assays having the lowest frequency of being conducted by the analyzer; and . . . a second sub-group **B** of assays comprising those assays not contained in either the first or third sub-groups of assays, wherein the third source **26** of reagents contains reagents needed for conducting the first **A**, second **B**, and third **C** sub-groups of assays, the second source **27** of reagents contains only those reagents needed for conducting the first **A** and second **B** sub-groups of assays, and the first source **28** of reagents contains only those reagents needed for conducting the first sub-group **A** of assays.

As explained in paragraphs [0042] – [0044] of the originally-filed specification, and as illustrated in Fig. 9A, one server 26 has reagents for assays in subgroups A, B, and C, another server 27 has reagents for assays in subgroups A and B, and the remaining server 28 has reagents only for assays in subgroup A. More specifically, sub-group A is duplicated in servers 26, 27, and 28, sub-group B is duplicated in servers 26 and 27, and sub-group C is only in server 26 and is not duplicated in servers 27 or 28.

In contrast, and as noted in section 6 of the Office Action, Devlin fails to disclose a third reagent source. As explained at Column 9, lines 19 – 24, analyzer 10 (the upstream analyzer) may be selectively adapted to perform all the assays within Group A, and analyzer 11 (the downstream analyzer) may be similarly adapted to perform the same totality of assays within Group A. Two temperature-controlled reagent storage areas 26 and 28 each store a plurality of reagent cartridges 30. Column 5, lines 32 – 33. Analyzers 10 and 11 have reagents (26 and 28 only) stored on-board so that only Group A and Group B assays may be performed by analyzer 10 and Group A and Group C assays may be performed by analyzer 11. Column 10 lines 8 – 12.

The Examiner finds multiple reagent sources 140, 145, 150, and 155 in Vuong. Applicant notes that element 140 of Vuong is an incubator rather than a reagent source. Column 12, line 38.

Applicant respectfully disagrees with the Examiner's assertion that one would add the additional reagent sources from Vuong to the system of Devlin to speed processing of samples. In contrast, Vuong discloses the use of "functions and enhancements that enable the automated laboratory access to a wide variety of assays and analytical procedures that were not capable of being implemented in earlier systems." Column 7, lines 29 – 32. To this end, Vuong provides different types of reagent dispenser modules (type 155 for small volume reagent additions and type 145 and 150 for sequential addition of different materials). Column 13, lines 11 – 16 and 26 – 32. In other words, Vuong provides placing one type of reagent (small volume) in one reagent server 155 and another type of reagent (sequential additions) in another type of reagent server. Vuong segregates reagents among servers and completely fails to mix the different types of reagents into the same server as does Applicant's claimed method. Furthermore, when

the system of Vuong encounters a capacity issue, reagent servers of the same type (145 and 150) are added.

> "These additions may be performed with the same type of dispenser but may be limited by the capacity of a single dispenser module. Therefore, two dispenser modules 145 and 150 of the same type located along the same track 105 . . ." Column 13, lines 33 – 37.

In other words, Vuong increases throughput adding the same type of reagent dispenser modules and ***not*** by distributing different reagents in different servers as recited in Applicant's claim 1, wherein reagents for one *type of assay* (sub-group A) is duplicated in servers 26, 27, and 28, reagents for a *different type of assay* (sub-group B) are duplicated in servers 26 and 27, and reagents for *another different type of assay* (sub-group C) are only in server 26 and are not duplicated in servers 27 or 28.

Applicant further traverses this rejection on the basis that adding additional reagent sources of the same type (as Vuong teaches) into Devlin's dual analyzers 10 and 11 only adds more reagents to perform Group A and Group B assays into upstream analyzer 10 and more reagents to perform Group A and Group C assays into downstream analyzer 11. This is in no way equivalent to, nor does it make obvious, Applicant's method of duplicating reagents for performing two sub-groups of assays within only two of the three reagent sources of a single analyzer *wherein one source 26 of reagents contains reagents needed for conducting all three sub-groups A, B, and C of assays, another source 27 of reagents contains only those reagents needed for conducting two sub-groups A and B of assays, and another source 28 of reagents contains only those reagents needed for conducting one sub-group A of assays.*

Finally, the Examiner "submits that it would be obvious to one of ordinary skill in the art to provide the first, second and third reagents in all of the reagent sources." Thus, the logical

corollary to this statement is that it would not be obvious to (1) provide first, second, and third reagents in a third server, (2) provide only first and second reagents in a second server, and (3) provide only first reagents in a first server.

Accordingly, Applicant respectfully submits that claim 11 should be allowed. Applicant further respectfully submits that because claim 5 is dependent upon allowable claim 11 (as amended), claim 5 should also be allowed at least as dependent upon an allowable base claim. Withdrawal of the 35 U.S.C. § 103(a) rejections of claims 5 and 11 is respectfully requested.

Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned at the Examiner's convenience.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the present application, including claims 5 and 11, is in condition for allowance, and a Notice to that effect is respectfully requested.

Respectfully submitted,

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